



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS

George E. Pataki  
Governor

Patrick H. Brennan  
Commissioner

March 1, 2006

Dear Member of New York State Delegation:

I am writing to express my concern for HR 4167, the National Uniformity for Food Act, as currently written. This bill could make it more difficult for states like New York with strict food safety regulations to protect our food supply.

As you know, the current food safety regulatory system in the United States is the shared responsibility of local, state and federal partners. Local and state agencies currently perform approximately 80% of the food safety work across the nation and federal agencies often seek assistance from local/state partners in dealing with imminent health hazards. Therefore, it is imperative that states have the right to act quickly to enact laws and issue rules that address local and statewide public health concerns that cannot be anticipated or are not adequately addressed nationally.

In addition to preempting state laws relating to food safety warnings, HR 4167 would require states to change their laws to be identical to the federal Food, Drug, and Cosmetic Act (FDCA).

If this proposed legislation is enacted, the Association of Food and Drug Officials anticipates the following:

***State enforcement action related to adulterated food or misbranding would be open to challenge.*** Variations in language currently exist between many of New York's food laws, relating to adulterated food and additives, and the respective federal counterpart. Under this proposed legislation, states will be required to seek clarity to determine if New York laws are "identical" to federal law through an appeals process with the U.S. Food and Drug Administration (FDA). During this process, the states' enforcement attempts to ensure food safety and security will be open to legal challenge by anyone who violates state food safety provisions. This fact is problematic at a time when the nation is forced to address current problems such as "mad cow" disease (state food safety laws cover adulterated animal feed), unsafe food or food ingredients, and possible terrorist threats to the nation's food supply. If passed into law, HR 4167 has the potential to deregulate food safety requirements at a time when quick food safety action could prove crucial to protecting the public. In the past, FDA has typically acted months after a food safety concern has occurred where New York State has taken action quickly to protect our consumers.

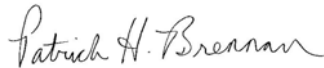
***New York State's ability to enforce food safety laws would be hampered.***

Currently, there is very limited food inspection and corrective action taken in New York by federal authorities. The New York State Department of Agriculture and Markets has coordinated over 1,000 food recalls in the past three years. If HR 4167 is passed, the New York law authorizing the quarantine or seizure of misbranded or adulterated food could be unenforceable. Due to the broad wording relating to the "construction" provision in this proposed federal law, New York could be left without any means to keep contaminated food from entering the nation's food supply.

***Food inspection enforcement laws relating to grade A milk, grocery stores and shellfish would be preempted.*** Currently there are no federal laws governing the inspection and regulation of grade A milk production for interstate commerce, shellfish harvesters and processors, or regulation of retail food establishments like grocery stores and restaurants. By failing to specifically reference these code sections in the bill, states are left to assume that state regulations, relating to inspection and enforcement of these programs, may be preempted because there are no federal laws governing these program areas. These food safety areas would then be left unregulated.

For the above reasons, I ask you to work with us to amend HR 4167 to ensure that New York's strong food safety programs remain intact so that our food supply remains as safe as possible. Please let me know if we can provide any additional information or assistance.

Sincerely,



Patrick H. Brennan  
Commissioner